

## SENATE BILL No. 275

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 24-9; IC 25-34.1-3-2; IC 32-29-7-3.

**Synopsis:** Mortgage lending issues. Provides that for an adjustable rate home loan that is closed after June 30, 2008, the creditor may not charge the borrower prepayment fees or penalties that are due and payable after the earlier of: (1) one year after the date of the closing of the loan; or (2) 60 days before the first scheduled adjustment of the loan's rate. Provides that a person may not do either of the following unless the person is licensed in Indiana as a real estate broker or salesperson: (1) Conduct an open house in a home that is listed for sale in Indiana. (2) Conduct an open house or show a model home in a neighborhood or subdivision in which similar homes are or will be listed for sale in Indiana. For a mortgage foreclosure proceeding initiated after June 30, 2008, requires: (1) the clerk of the court to certify to the sheriff a copy of the judgment or decree not later than five business days after the praecipe is filed; and (2) the sheriff to conduct a sale of the property not later than 90 days after receipt of the judgment or decree.

**Effective:** July 1, 2008.

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January 10, 2008, read first time and referred to Committee on Commerce, Public Policy & Interstate Cooperation.

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Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## SENATE BILL No. 275

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 24-9-3-4.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2008]: **Sec. 4.5. (a) This section applies to an adjustable rate**  
4 **home loan that is closed after June 30, 2008.**

5 **(b) As used in this section, "adjustable rate home loan" means**  
6 **a home loan with a rate that is subject to change at one (1) or more**  
7 **times during the term of the loan.**

8 **(c) The loan documents for an adjustable rate home loan may**  
9 **not provide for, and a creditor making an adjustable rate home**  
10 **loan may not charge the borrower, prepayment fees or penalties**  
11 **that are due and payable after the earlier of:**

12 **(1) one (1) year after the date of the closing of the adjustable**  
13 **rate home loan; or**

14 **(2) sixty (60) days before the first scheduled adjustment of the**  
15 **loan's rate.**

16 **(d) If an adjustable rate home loan is also a high cost home loan,**  
17 **the loan documents for the loan may not provide for, and a**



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1 **creditor making the adjustable rate home loan may not charge the**  
 2 **borrower, prepayment fees or penalties in an amount that exceeds**  
 3 **the amount specified in IC 24-9-4-1(2).**

4 SECTION 2. IC 24-9-4-1 IS AMENDED TO READ AS FOLLOWS  
 5 [EFFECTIVE JULY 1, 2008]: Sec. 1. The following additional  
 6 limitations and prohibited practices apply to a high cost home loan:

7 (1) A creditor making a high cost home loan may not directly or  
 8 indirectly finance any points and fees.

9 (2) Prepayment fees or penalties may not be included in the loan  
 10 documents for a high cost home loan or charged to the borrower  
 11 if the fees or penalties exceed in total two percent (2%) of the  
 12 high cost home loan amount prepaid during:

13 (A) the first twenty-four (24) months after the high cost home  
 14 loan closing, **for a high cost home loan that:**

15 (i) **is not an adjustable rate home loan; or**

16 (ii) **is an adjustable rate home loan that is closed before**  
 17 **July 1, 2008; or**

18 (B) **the time during which prepayment penalties may be**  
 19 **imposed under IC 24-9-3-4.5(c), for a high cost home loan**  
 20 **that is an adjustable rate home loan that is closed after**  
 21 **June 30, 2008.**

22 (3) **For a high cost home loan described in subdivision 2(A), a**  
 23 **prepayment penalty may not be contracted for after the second**  
 24 **year following the high cost home loan closing. For a high cost**  
 25 **home loan described in subdivision 2(B), a prepayment**  
 26 **penalty may not be contracted for or imposed after the time**  
 27 **set forth in IC 24-9-3-4.5(c).**

28 (4) A creditor may not include a prepayment penalty fee in a high  
 29 cost home loan unless the creditor offers the borrower the option  
 30 of choosing a loan product without a prepayment fee. The terms  
 31 of the offer must be made in writing and must be initialed by the  
 32 borrower. The document containing the offer must be clearly  
 33 labeled in large bold type and must include the following  
 34 disclosure:

35 "LOAN PRODUCT CHOICE

36 I was provided with an offer to accept a product both with and  
 37 without a prepayment penalty provision. I have chosen to  
 38 accept the product with a prepayment penalty."

39 (5) A creditor shall not sell or otherwise assign a high cost home  
 40 loan without furnishing the following statement to the purchaser  
 41 or assignee:

42 "NOTICE: This is a loan subject to special rules under

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1 IC 24-9. Purchasers or assignees may be liable for all claims  
 2 and defenses with respect to the loan that the borrower could  
 3 assert against the lender."

4 (6) A mortgage or deed of trust that secures a high cost home loan  
 5 at the time the mortgage or deed of trust is recorded must  
 6 prominently display the following on the face of the instrument:

7 "This instrument secures a high cost home loan as defined in  
 8 IC 24-9-2-8."

9 (7) A creditor making a high cost home loan may not finance,  
 10 directly or indirectly, any life or health insurance.

11 SECTION 3. IC 25-34.1-3-2 IS AMENDED TO READ AS  
 12 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) **Subject to**  
 13 **subsection (c) and** except as provided in:

14 (1) subsection (b);

15 (2) section 8(i) of this chapter; and

16 (3) section 11 of this chapter;

17 no person shall, for consideration, sell, buy, trade, exchange, option,  
 18 lease, rent, manage, list, or appraise real estate or negotiate or offer to  
 19 perform any of those acts in Indiana or with respect to real estate  
 20 situated in Indiana, without a license.

21 (b) This article does not apply to:

22 (1) acts of an attorney which constitute the practice of law;

23 (2) performance by a public official of acts authorized by law;

24 (3) acts of a receiver, executor, administrator, commissioner,  
 25 trustee, or guardian, respecting real estate owned or leased by the  
 26 person represented, performed pursuant to court order or a will;  
 27 (4) rental, for periods of less than thirty (30) days, of rooms,  
 28 lodging, or other accommodations, by any commercial hotel,  
 29 motel, tourist facility, or similar establishment which regularly  
 30 furnishes such accommodations for consideration;

31 (5) rental of residential apartment units by an individual  
 32 employed or supervised by a licensed broker;

33 (6) rental of apartment units which are owned and managed by a  
 34 person whose only activities regulated by this article are in  
 35 relation to a maximum of twelve (12) apartment units which are  
 36 located on a single parcel of real estate or on contiguous parcels  
 37 of real estate;

38 (7) referral of real estate business by a broker, salesperson, or  
 39 referral company which is licensed under the laws of another  
 40 state, to or from brokers and salespersons licensed by this state;

41 (8) acts performed by a person in relation to real estate owned by  
 42 that person unless that person is licensed under this article, in

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which case the article does apply to ~~him~~; **that person**;

(9) acts performed by a regular, full-time, salaried employee of a person in relation to real estate owned or leased by that person unless the employee is licensed under this article, in which case the article does apply to ~~him~~; **that person**;

(10) conduct of a sale at public auction by a licensed auctioneer pursuant to IC 25-6.1;

(11) sale, lease, or other transfer of interests in cemetery lots; and

(12) acts of a broker or salesperson, who is licensed under the laws of another state, which are performed pursuant to, and under restrictions provided by, written permission that is granted by the commission in its sole discretion, except that such a person shall comply with the requirements of section 5(c) of this chapter.

**(c) After June 30, 2008, a person may not do either of the following without a license issued under this chapter:**

**(1) Conduct an open house in a home that is listed for sale in Indiana.**

**(2) Conduct an open house or otherwise show a model home in a neighborhood or subdivision in which similar homes are or will be listed for sale in Indiana.**

SECTION 4. IC 32-29-7-3, AS AMENDED BY P.L.240-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) In a proceeding for the foreclosure of a mortgage executed on real estate, process may not issue for the execution of a judgment or decree of sale for a period of three (3) months after the filing of a complaint in the proceeding. However:

(1) the period is:

(A) twelve (12) months in a proceeding for the foreclosure of a mortgage executed before January 1, 1958; and

(B) six (6) months in a proceeding for the foreclosure of a mortgage executed after December 31, 1957, but before July 1, 1975; and

(2) if the court finds that the mortgaged real estate is residential real estate and ~~has been abandoned~~; **is vacant**, a judgment or decree of sale may be executed on the date the judgment of foreclosure or decree of sale is entered, regardless of the date the mortgage is executed.

(b) A judgment and decree in a proceeding to foreclose a mortgage that is entered by a court having jurisdiction may be filed with the clerk in any county as provided in IC 33-32-3-2. **Subject to subsection (i)**, after the period set forth in subsection (a) expires, a person who may enforce the judgment and decree may file a praecipe with the clerk in

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any county where the judgment and decree is filed, and the clerk shall promptly issue and certify to the sheriff of that county a copy of the judgment and decree under the seal of the court.

(c) Upon receiving a certified judgment under subsection (b), the sheriff shall, subject to section 4 of this chapter **and subsection (i)**, sell the mortgaged premises or as much of the mortgaged premises as necessary to satisfy the judgment, interest, and costs at public auction at the office of the sheriff or at another location that is reasonably likely to attract higher competitive bids. The sheriff shall schedule the date and time of the sheriff's sale for a time certain between the hours of 10 a.m. and 4 p.m. on any day of the week except Sunday.

(d) Before selling mortgaged property, the sheriff must advertise the sale by publication once each week for three (3) successive weeks in a daily or weekly newspaper of general circulation. The sheriff shall publish the advertisement in at least one (1) newspaper published and circulated in each county where the real estate is situated. The first publication shall be made at least thirty (30) days before the date of sale. At the time of placing the first advertisement by publication, the sheriff shall also serve a copy of the written or printed notice of sale upon each owner of the real estate. Service of the written notice shall be made as provided in the Indiana Rules of Trial Procedure governing service of process upon a person. The sheriff shall charge a fee of ten dollars (\$10) to one (1) owner and three dollars (\$3) to each additional owner for service of written notice under this subsection. The fee is:

- (1) a cost of the proceeding;
- (2) to be collected as other costs of the proceeding are collected; and
- (3) to be deposited in the county general fund for appropriation for operating expenses of the sheriff's department.

(e) The sheriff also shall post written or printed notices of the sale in at least three (3) public places in each township in which the real estate is situated and at the door of the courthouse of each county in which the real estate is located.

(f) If the sheriff is unable to procure the publication of a notice within the county, the sheriff may dispense with publication. The sheriff shall state that the sheriff was not able to procure the publication and explain the reason why publication was not possible.

(g) Notices under subsections (d) and (e) must contain a statement, for informational purposes only, of the location of each property by street address, if any, or other common description of the property other than legal description. A misstatement in the informational statement under this subsection does not invalidate an otherwise valid sale.

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1 (h) The sheriff may charge an administrative fee of not more than  
 2 two hundred dollars (\$200) with respect to a proceeding referred to in  
 3 subsection (b) for actual costs directly attributable to the administration  
 4 of the sale under subsection (c). The fee is:

5 (1) payable by the person seeking to enforce the judgment and  
 6 decree; and

7 (2) due at the time of filing of the praecipe;  
 8 under subsection (b).

9 **(i) This subsection applies to a foreclosure proceeding that is**  
 10 **initiated by the filing of a complaint by the mortgagee or the**  
 11 **mortgagee's assignee after June 30, 2008. Not later than five (5)**  
 12 **business days after the filing of a praecipe under subsection (b), the**  
 13 **clerk shall issue and certify to the sheriff of the county a copy of**  
 14 **the judgment or decree under the seal of the court. The sheriff**  
 15 **shall conduct the sale required by subsection (c) not later than**  
 16 **ninety (90) days after receipt of the judgment or decree from the**  
 17 **clerk under this subsection.**

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